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APPENDIX A

Decision of State of Minnesota Court of Appeals

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. §480A.08, subd.3 (2008).

STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2013

State of Minnesota,
Respondent,

vs.

Hussein Soloman Roble,
Appellant.

Filed September 7, 2010
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-CR-09-32332

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Brittany Lawonn, Certified Student Attorney, Minneapolis, Minnesota (for respondent)

Eric L. Newmark, Birrell & Newmark, Ltd., Minneapolis, Minnesota (for appellant)

Considered and decided by lansing, Presiding Judge; Wright, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

In this appeal from his conviction of fifth-degree criminal sexual conduct, appellant argues that the evidence is insufficient to sustain the jury's verdict. We affirm.

FACTS

Appellant Hussein Roble was charged with fifth-degree criminal sexual conduct, a violation of Minn. Stat. §609.3451, subd. 1(1) (2008), arising from an incident in a Minneapolis department store. The case proceeded to trial during which witnesses, including Roble and M.T., testified regarding the following events. In June 2009, M.T. was shopping at Kmart. According to M.T., while she was standing in an isle looking at sale items, she felt an erect penis touch her buttocks. She turned and saw a man, later apprehended and identified as Roble, and called for help. Roble began to run as M.T threw a package of sheets or curtains at him in an effort to make him stop. Before fleeing, Roble made a gesture to try to calm M.T.; and he said he was sorry. M.T chased Roble as he ran through the isles of the store and out of the entrance door.

When the offense was committed, Minneapolis Police Officer Jeffrey Carter was providing off duty security

services for Kmart. As he sat in his squad car parked outside the store's front entrance doors, he observed Roble exit the store and began to walk away. M.T., who followed Roble out of the store, ran to Officer Carter's squad car. According to Officer Carter, M.T. was shaking and crying. When Officer Carter asked what was wrong, M.T., who has limited English language proficiency, repeatedly pointed at Roble and said, "That man." Officer Carter approached Roble and asked him what happened. Roble told Officer Carter that he thought M.T. may be mentally ill because she yelled at him in the store and started throwing sheets at him. After Officer Carter placed Roble in the back of his squad car, he asked Y.B., a Kmart employee who speaks fluent Spanish and English, to translate for M.T. Through Y.B., M.T. told Officer Carter that Roble "brushed up against her buttocks with his penis." Officer Carter asked M.T. how she knew it was Roble's penis and whether it was "fully erect." M.T answered that it was fully erect and that she and Roble were the only people in an isle in which there was plenty of room for Roble to pass without touching her. After asking M.T. additional questions, Officer Carter arrested Roble.

Following its deliberations, the jury found Roble guilty of fith-degree criminal sexual conduct. This appeal followed.

DECISION

When reviewing a challenge to the sufficiency of the evidence, we conduct a thorough analysis of the record to determine whether the jury reasonably could find the defendant guilty of the charged offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. State v. Chambers, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the conviction, assuming that the jury believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary. Id. It is the exclusive province of the jury to determine the weight and credibility to be afforded the testimony of each witness. State v. Folkers, 581 N.W.2d 321, 327 (Minn. 1998). We will not disturb the guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant was guilty of the charged offense. State v. Alton, 432 N.W.2d 754, 756 (Minn. 1988).

Circumstantial evidence is entitled to the same weight as any other evidence, provided the circumstances proved are "consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." State v. Pirsig, 670 N.W.2d 610, 614 (Minn. App. 2003), review denied (Minn. Jan.20, 2004).

A person is guilty of fifth-degree criminal "if the person engages in nonconsensual sexual contact." Minn. Stat. §609.3451, subd. 1(1). Although "sexual contact" does not include the intentional touching of the clothing covering

the immediate area of the buttocks, "sexual contact" does include "the nonconsensual touching by the complainant of the actor's intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent." Id., subd. 1 (2008). Here, Roble was charged with causing M.T. to touch his penis, which is an intimate part. See Minn. Stat. □ 609.341, subd. 5 (2008) (defining "intimate parts" to include the "primary genital area" and "groin").

Roble first argues that there is only circumstantial evidence that he touched M.T.'s buttocks with his penis. Roble concedes that the evidence, viewed in the light most favorable to the verdict, is that Roble briefly brushed against M.T. Thus, Roble does not dispute that he was the person who touched M.T. Roble contends, however, that the state did not exclude all reasonable inferences other than guilt because "[i]t is reasonable to conclude that M.T. mistook another object, body part, cell phone, or something else as [Roble's] penis." We disagree. M.T Officer Carter and testified at trail that she Knew Roble touched her with his penis and that it was fully erect. As to this fact, M.T.'s testimony and her statements immediately after the offense are unequivocal. She is sure that Roble's penis touched her. It felt like an erect penis; it did not feel like a cell phone, leg, or finger. Based on the guilty verdict returned, the jury believed M.T.'s testimony and rejected Roble's testimony to the contrary. See Cjambers, 589 N.W.2d at 477 (requiring court reviewing a challenge to the sufficiency of the evidence to assume that jury believed the evidence supporting the guilty verdict and disbelieved evidence to the contrary); State v. Wallace, 558 N.W.2d 469, 472 (Minn. 1997) stating that it is the exclusive province of the jury to

determine the credibility and weight of the evidence). Moreover, there is no evidence in the record that Roble was carrying a cell phone or any other device that M.T. could have mistaken for his erect penis. When questioned by Officer Carter, Roble said that M.T. threw something at him without provocation. He did not suggest, as he does on appeal, that he may have brushed up against her in a such a manner she could have mistakenly thought he touched her with his penis. Indeed, Roble testified at trial that he did not recall bumping into M.T. When viewing the evidence in the light most favorable to the verdict, there is an abundance of evidence to support the jury's determination that Roble touched M.T. with his penis.

Roble next argues that, even if sexual contact occurred, the state failed to prove that the contact was made with the requisite intent. Because the intent element of an offense involves a state of mind, it is ordinarily proved circumstantially. State v. Davis, 656 N. W.2d 900, 905 (Minn. App. 2003), review denied (Minn. May 20, 2003); see also Davis v. State, 595 N.W.2d 520, 525-26 (Minn. 1999) (stating that intent may be proved by circumstantial evidence, including the defendant's conduct, and by events before and after the crime).

Roble first contends that he did not touch M.T with his penis. According to Roble, the evidence supports the conclusion that any contact was brief and that the contact took place in the isle of a department store where "a person could easily and unintentionally bump into another person." M.T. testified that Roble was the only person near her when she turned around immediately after being

touched. Roble did not tell Officer Carter or testify at trial that he accidentally bumped into M.T. The evidence, therefore, is inconsistent with Roble's contention on appeal that an accidental bumping occurred. M.T. also testified that Roble apologized and ran out the entrance doors of the store. Standing alone, the apology may support Roble's argument. But when combined with flight, the apology does not negate the evidence supporting the jury's determination that Roble's conduct was intentional. See State v. McDaniel, 777 N.W.2d 739, 747 (Minn. 2010) (stating that evidence of flight suggests consciousness of guilt). On this record, there is more than sufficient evidence to support the jury's conclusion that Roble acted with the purpose of causing physical contact between M.T. and his penis. See Minn. Stat. □ 609.02, subd. 9(4) (2008) (defining "[w]ith intent to" or "with intent that" as having a purpose to do thing).

Finally, Roble argues that the state failed to prove that he acted with either sexual or aggressive intent. M.T.'s testimony offers ample evidentiary support that Roble was sexually aroused when he touched M.T. with his penis and that the touching was sexual in nature. M.T. testified that Roble, a stranger, walked up behind her and touched her with his erect penis in the middle of her buttocks. The nature of this conduct permits the inference that Roble engaged in the contact with sexual intent. See Minn. Stat. □609.341, subd. 11 (a) (2008) (requiring "sexual or aggressive intent" (emphasis added00; State v. Ahmed, 782 N.W.2d 253, 262 (Minn. App. 2010) (rejecting appellant's contention that conviction may only lie where both sexual and aggressive intent are proven). Indeed, an erect penis is

probative of sexual intent. State v. Ohrtman, 466 N.W.2d 1, 3 (Minn. App. 1991) (stating that an erection, if proved, would be an indicator of sexual intent). When considered as a whole and viewed in the light most favorable to the jury's verdict, the evidence is more than sufficient to establish that Roble acted with sexual intent when he touched M.T.'s buttocks with his erect penis.

Our careful review of the record establishes that Roble has not presented a reasonable hypothesis supporting any conclusion other than that of guilt. There is more than sufficient evidence that, with sexual or aggressive intent, Roble intentionally touched M.T. with his erect penis in the middle of her buttocks. Accordingly, Roble's challenge to the sufficiency of the evidence to support his conviction of fifth-degree criminal sexual conduct fails.

Affirmed.

APPENDIX B

Decision of State of Minnesota Supreme Court

STATE OF MINNESOTA

IN SUPREME COURT

A09-2013

State of Minnesota,

Respondent,

vs.

Hussein Soloman Roble,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED that the petition of Hussein Soloman Roble for further review be denied, and the same is, denied.

Dated: November 16, 2010

BY THE COURT:

Lorie S Gildea
Chief Justice

APPENDIX C

(Please see)

Hennepin County District Court Transcript

Of The Trial Before Judge Daniel H. Mabley

On October 13-14, 2009